

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AFFYMETRIX, INC.,

Plaintiff/Counter-Defendant,

vs.

ILLUMINA, INC.,

Defendant/Counter-Plaintiff

Civil Action No. 04-901-JFF

**ILLUMINA INC.'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO AFFYMETRIX, INC.**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Illumina, Inc. ("Illumina") hereby requests that Affymetrix, Inc. ("Affymetrix") produce for inspection and copying the following documents and tangible things in accordance with its obligations under the Federal Rules of Civil Procedure and the Definitions and Instructions set forth below, within 30 days of service, at the offices of Kirkland & Ellis LLP, 555 California Street, San Francisco, California, 94104, or at a time and place mutually agreed to by the parties.

REQUESTS

REQUEST NO. 1:

Documents sufficient to identify Affymetrix's policies and procedures for generating, maintaining, and disposing of its documents, including but not limited to policies and practices regarding generating, maintaining and disposing of patent applications and prosecution files, or any scientific or technical references related to such files.

RESPONSE TO REQUEST NO. 1:

REQUEST NO. 2:

All pleadings, transcripts, depositions of Affymetrix's witnesses, expert reports and documents produced by Affymetrix to the opposing party(ies) in all actions identified in the Response to Interrogatory No. 6, including but not limited to actions involving the following parties:

- a. Oxford Gene Technology Ltd. v. Affymetrix, Inc.
- b. Affymetrix, Inc. v. Synteni, Inc. and Incyte Pharmaceuticals, Inc.
- c. Affymetrix, Inc. v. Hyseq, Inc.

RESPONSE TO REQUEST NO. 2:

REQUEST NO. 3:

Documents sufficient to identify Affymetrix's current organizational structure, including documents sufficient to identify Affymetrix's current and former officers, directors, and managing agents, by position and/or title.

RESPONSE TO REQUEST NO. 3:

REQUEST NO. 4:

All documents and things relating to any research, development and testing of any of the Affymetrix products and/or processes that Affymetrix contends practice, embody or incorporate the alleged invention(s) claimed in the Affymetrix Patents.

RESPONSE TO REQUEST NO. 7:

REQUEST NO. 8:

All documents and things relating to (a) conception, (b) reduction to practice, and (c) diligence toward reduction to practice of any alleged invention(s) described and/or claimed in the Affymetrix Patents and/or any Related Patents, including but not limited to inventor notebooks, diaries, calendars, work records, invention disclosures and summaries.

RESPONSE TO REQUEST NO. 8:

REQUEST NO. 9:

All documents and things relating to the best mode of practicing the alleged invention(s) described and/or claimed in the Affymetrix Patents and/or any Related Patents.

RESPONSE TO REQUEST NO. 9:

REQUEST NO. 10:

All documents and things relating to any product or process that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents and/or any Related Patents, including but not limited to press releases, advertising material, marketing material, promotional material, technical material, sales information, pricing information, and profit/loss and cost information.

EXHIBIT B

2500 Harbor Boulevard, Box 3100, Fullerton, CA 92634-3100 • (714) 871-6848

BECKMAN

Exhibit M3

Opposition by Progene Laboratories, Inc.
to EP 0 619 321
Affymax Technologies N.V.
Our Ref.: D2356 EP/OPP

October 28, 1991

To: Mike O'Neill
Jim Sternberg
Jim Osborne

From: Paul Silverman

Subject: Affymax and Human Genome III, Oct. 21-23, San Diego

Among the 500-800 attendees at the San Diego Human Genome meeting were John Diekman, Jonathan Briggs, Stephen Fodor and Ann Pease of Affymax. Also present was Ron Davis, Prof. at Stanford who is on the Affymax Scientific Advisory Board and actively involve in DNA hybridization technology. He is an invited member of the "Sequencing by Hybridization" Workshop due to take place November 19-20 in Moscow (see attached list and program).

During the three days I, Jeff Quint and Peter Coasin had a number of individual discussions with all the Affymax representatives. John Diekman told Jeff about Affymax's efforts to develop a joint venture with Beckman and his efforts to work with O'Neill and Wareham to establish a more encompassing arrangement than was emerging from the negotiations with Mike Velez et al. Whatever the future agreement between Affymax and Beckman, it should take account of the following information.

Ron Davis in a private conversation with me acknowledged that the lithographic technology that has worked well for the production of peptides has not been equally effective with oligonucleotides. In that context he indicated that he would not be attending the Moscow meeting. Later, in the presence of Jonathan Briggs, he insisted that all the problems were "resolvable". Briggs, throughout the meeting, was in a depressed and anxious mood. As described in Peter's memorandum (attached), Briggs was hovering nearby whenever Fodor, Pease or Davis engaged in conversations with conference members.

Beckman Instruments, Inc.

Biological Systems Group • Tel: 910-882-1200 • Telex: 05-70413

IAFP00006604

The claims for light directed oligonucleotide synthesis by Affymax have significantly retreated since the publication in Science, February 15, 1991. As recently as September 4th when I heard Fodor's presentation to the joint DOE/NIH Human Genome Advisory committee (in Lafayette, Ca) the implication of successful synthesis was apparent. This implication has been dropped and as summarized in Peter's memorandum, the process is described as a concept that has not yet been realized. I believe that these circumstances have relevance for any negotiations with Affymax, and for the patent status of the Southern technology.



Paul Silverman

PS/bb

EXHIBIT C

Exhibit M2

Opposition by Protogene Laboratories, Inc.
to EP 0 619 321
Affymax Technologies N.V.
Our Ref.: D2356 EP/OPP

To: Jim Osborne
From: Peter J Coassin
Date: 10/24/91
Subject: Meeting with Affymax Researcher at Human
Genome III Poster Presentation

On Wednesday morning, 10/23/91, at the Human Genome Conference III held in San Diego, I attended a talk given by Ron Davis of Stanford. The title of the talk was "Sequencing the Yeast Genome." Dr. Davis never discussed the Yeast Genome specifically; instead he spent his time talking about the development of a sequencing factory capable of reliably churning out high quality data at the lowest cost possible. He cursorily reviewed the sequencing options available in the marketplace which contributed to the direction his laboratory has taken in dealing with his sequencing problems. Near the end of his talk he addressed sequencing by hybridization and then his awareness (cloaked) of an approach to the generation of huge numbers of discreet oligonucleotides on a surface which might act as targets for hybridization.

He highlighted the work going on in the laboratory of Affymax researcher Steven Fodor and described the conceptual approach taken to create vast arrays showing examples of the grids that can be created and the successful work that has been done with peptides. He stated that the conceptual approach was being implemented on nucleic acids. He had no direct data concerning the approach. He advised the audience that a poster on the subject of Light Directed Spatially Addressable Oligonucleotide Synthesis was being presented that afternoon.

I went downstairs at around 1:20 pm in the afternoon and joined a small crowd around the Affymax Poster and its presenter Ann Caviani Pease. I introduced myself, stated my affiliation with Beckman Instruments and mentioned that I had met S. Fodor and J. Briggs on a previous occasion in my laboratory. She was being questioned by a group of people who seemed unaware of the Affymax Technology, the Affymax organization or the previous publication from the research team. (One of the members of the small group was video filming the poster contents; I believe he was affiliated with a company called Plant Technologies Inc.) Their interest centered around obtaining completed oligonucleotide arrays. They wanted to know about specific results surrounding the use of oligonucleotide arrays and such. Ann Pease stated directly and emphatically to the small group clustered around her that the process was still a concept and that the process was not working yet. She was not sure when they would have such arrays ready. She stated that she was a postdoctoral research fellow hired into Dr. Fodor's team specifically to work on nucleic acid chemistry. She stated her involvement in the Affymax program was to optimize the synthesis chemistry for synthesizing arrays of nucleic acids and that improving the coupling efficiencies of the specific photolabile amidites was her most immediate mission.

I asked Ann specific questions concerning the exact nature of the photolabile protecting group (still the NVOC group as an alcohol, not the oxycarbonyl derivative) and the synthesis of the amidites. I asked if she had physical data concerning the amidites. She said they made the amidites themselves but was confused about the particular phosphorylating agent used. (She was not sure it was Chloro-DiisopropylAmino-BetaCyanoEthyl-Phosphite or even whether they were doing a chromatographic purification to obtain the purified final fully protected nucleotide phosphoramidite). She believed that optimization of the coupling reaction was solely related to the linkage chemistry on the solid support. It was not clear whether a standard synthesis on CPG using the photolabile protecting groups had been performed to demonstrate synthesis efficacy or purity on a scale more amenable to physical analysis by HPLC or CE. She indicated that this had not been done. She indicated that deprotection conditions for the synthesis had been worked out. How this had been determined was not clear.

During my discussion with Ann, Jonathan Briggs was standing by. After I concluded my discussion, he physically escorted her aside and I believe he asked her not to provide anyone with any technical information concerning the process or results. This belief was based upon my visual observation of Jonathan Briggs making a "cut" hand waving motion to Ann, his physical closeness to Ann (about 1-2 feet), the low tone of his voice and the briefness (about 30 seconds) of their conversation.

I relayed the subject matter of my discussion to Jeff Quint that same day and to M. Velez and J. Osborne the following day.

Peter J Coassin
10/24/91

cc Paul Harder
Rick Burgoon

EXHIBIT D
REDACTED IN ITS
ENTIRETY

EXHIBIT E
REDACTED IN ITS
ENTIRETY